IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE CIVIL JURISDICTION

COMPANY PETITION NIO.610 OF 12004

Administrator of Special Undertaking of Unit Trust of India and anr.
....Petitioners.

Vs.

Hotel Leelaventure Ltd. ....Respondents.

Mr. K.H. Mody i/by Harshad and company for the Petitioners.

Mr. J.P. Sen i/by Medekar and Co. for the company.

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CORAM : S.U. KAMDAR,J.
DATED : 29TH APRIL,2005.

P.C.:

1. The present petition is filed by the petitioners inter alia seeking claim of Rs. 18/- Crores. The said claim arises out of the loan converted by debentures of the company and to the petitioner herein. It is an admitted position that pursuant to the letter dated 30.3.2004 which is issued by the respondent company, the company has paid total amount of Rs.10,50,10,150/- in full and final settlement of the old claims by and between the parties. It is an admitted position that the said amount has been duly received by the petitioners and cheques were encashed.

2. There is correspondence by and between the parties in which the petitioner company has purportedly contended that the request for accepting the claim for full and final settlement will be examined after details are furnished by the respondent-company. The company thereafter furnished various details to the petitioners particularly by letter dated 30.3.2004 and the said sum of Rs.10,50,10,150/- in full and final settlement of the dues was accepted. However, after accepting the said claim in full and final settlement and encashment of the cheques the petitioners for the first time by letter dated 13.4.2005 imposed an additional condition that in an event if the company receive any additional amount from Hudco then in that event the respondent shall make payment to the petitioners of the additional amount than Rs.10,50,10,150/- which is accepted as full and final settlement of their claim.

3. In my opinion, the fact that the amount was tendered in full and final settlement of the claim by the respondents to the petitioners by letter dated 30.3.2004 and the said amount has been

received by the petitioners and they having also encashed the cheques. The said amount must be treated received as full and final settlement. It is now well settled that if the payment is tendered by the debtor with the condition and the creditor accepts the same then he accepts with the condition or nor at all. In any event, the aforesaid issue in my opinion squarely raises a bonafide dispute and thus the present petition for claim of additional amount can not be entertained in Summary jurisdiction under Section 433/434 of the Companies Act. Hence, petition dismissed. However, there shall be no order as to costs.

(S.U. KAMDAR, J.)